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SUPREME COURT, U.S.

IN THE

UNITED STATES SUPREME COURT

NO. 81-5280

ALLEN EUGENE LeMAY,

Appellant,

v.

STATE OF TENNESSEE,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF TENNESSEE

AMENDED MOTION TO DISMISS APPEAL

ROBERT A. GRUNOW
Deputy Attorney General

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OF COUNSEL:

WILLIAM M. LEECH, JR.
ATTORNEY GENERAL

MAY IT PLEASE THE COURT:

The State of Tennessee has moved this court pursuant to Rule 16.1(a) of the United States Supreme Court Rules to dismiss this appeal on the ground that the appeal was not within the court's jurisdiction. The appellant has now filed a response thereto contending that his pleadings filed with this court mischaracterize the case as being an appeal and that this case should be treated as a petition for a writ of certiorari to the Tennessee Supreme Court.

Rule 20.1 of the United States Supreme Court Rules states that a petition for a writ of certiorari to review the judgment in a criminal case of a state court of last resort must be filed with the Clerk of the Court within sixty days after the entry of said judgment. In this case the Tennessee Supreme Court denied LeMay's application for permission to appeal on April 20, 1981. The appeal in the instant case was not docketed with this court until August 18, 1981, more than sixty days after the judgment of the state court of last resort.

Accordingly, because the petition was untimely filed it should be dismissed.

Respectfully submitted,

ROBERT A. GRUNOW
Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Amended Motion to Dismiss Appeal has been forwarded by first-class mail to Mr. Robert L. Huskey, 105 East High Street, Manchester, Tennessee 37355, on this 14th day of November, 1981.

JOHN C. ZIMMERMANN
Assistant Attorney General